

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

FILED

APR 13 2006

U.S. DISTRICT COURT
CLARKSBURG, WV 26301

SHAWN A. PHILLIPS

Petitioner,

v.

Civil Action no. 5:06cv20
(Judge Stamp)

AL HAYNES, Warden, et al.,

Respondents.

MEMORANDUM OPINION and REPORT AND RECOMMENDATION
THAT CASE BE DISMISSED WITHOUT PREJUDICE

On December 15, 2005, the *pro se* petitioner, Shawn A. Phillips, initiated this case in the United States District Court for the District of Columbia. Because petitioner is an inmate at the Hazelton Penitentiary in Bruceton Mills, West Virginia and filed pursuant to 28 U.S.C. §2241, the case was transferred to this Court by Order dated January 6, 2006. However, a review of the file from the Southern District showed that while the petitioner had filed an Application to Proceed With Prepayment of Fees, he had not filed a consent to collect fees from trust account or a signed prisoner trust account report with ledger sheets. Therefore, on February 17, 2006, the Clerk sent the petitioner a Notice of Deficient Pleading with a warning that his failure to submit the required forms within 30 days would result in dismissal of his case for failure to prosecute. As of April 5, 2006, the required forms have yet to be filed.

RECOMMENDATION

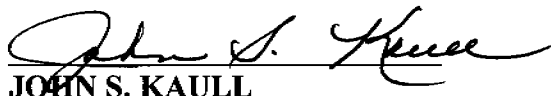
In consideration of the foregoing, it is recommended that the petition be **DISMISSED** without prejudice.

Any party may file within ten (10) days of the date of this Recommendation, with the Clerk of the Court, written objections identifying the portions of the Recommendation to which

objections are made, and the basis for such objections. A copy of such objections should also be submitted to the District Judge of Record. Failure to timely file objections to the Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984); cert. Denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 f.2d 841 (4th Cir 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk of the Court is directed to mail a copy of this Report and Recommendation to the *pro se* petitioner and any counsel or record..

DATED: *April 13, 2006*

A handwritten signature in cursive script, reading "John S. Kaul", written in black ink over a horizontal line.

JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE